Michigan
COMMON CAUSE
Holding Power Accountable

Testimony on HB6182-6188

The Supreme Court of the United States' *Citizens United Decision* left a large hole in Michigan's Campaign Finance Act. MCL 169.201 et seq. (1976). Justice Kennedy's Opinion found that corporations could use their corporate treasury funds to make independent expenditures. The Federal Election Commission (FEC) defines and independent expenditure as **"an expenditure by a person for a communication expressly advocating the election or defeat of a clearly indentified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents."** 2 U.S.C. 431(17). Prior to this Opinion, corporations and unions could only make independent expenditures if it formed a political action committee that the corporation or union could solicit funds for and make political expenditures from, then, and only then, could they make independent expenditures.

Constitutional Issues

The bills, HB6182 – HB6188, begin to address the gaping holes, however, they require work to past First Amendment constitutional muster in order to fend off future challenges to it. **The Supreme Court of the United States has found over and over again that regulations of First Amendment Freedom of Speech rights cannot overly burden political speech and that it must be narrowly tailored to serve a compelling state interest. *Buckley v. Valeo*. 424 U.S. 1, 44-45 (1976).** This means that a law that restricts or makes it harder to make the speech must

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be confined to the speech that the legislature intends to target and the legislature must have an extremely good reason to want to regulate that speech.

HB 6185 (Bledsoe) concept of eliminating pay-to-play is good and addresses a major government ethics issue that Common Cause supports. However, in its current form it is likely to be found unconstitutional. In order to give it stronger constitutional footing, the prohibition on independent expenditure should be a future condition of bidding and entering into a contract with the state and applying for grants, tax credits, and other tax incentives. I also recommend that the condition be explicitly applied to independent expenditures made with corporate treasury funds because this is where taxpayers' money would be used for electioneering activities but leaves open other avenues for the corporation to make their political speech. In addition, this would have to apply to future contractors and applicants because applying it to current contractors and applicants would likely raise due process violations. I suggest Representative Bledsoe look at how the **Michigan Gaming Control an Revenue Act, MCL 432.201 et seq (1996)**, prohibits political activities for "licensee or person who has an interest in a licensee or casino enterprise." **432.207b**. I have also appended it to my written testimony.

In **HB6186 (Haase)**, section 2 is overly broad and unconstitutional. Representative Haase will want to set a threshold for shareholder ownership because of the global economy we live in, it is likely even a Michigan corporation has one foreign shareholder.

Other Recommendations

I recommend an amendment to the Michigan Campaign Finance Act's definition of "independent expenditure" so it is similar to the federal definition. This way if a person or entity is making independent expenditures for both federal and state elections there is no confusion as to

Michigan Definition: Independent expenditure" means an expenditure by a person if the expenditure is not made at the direction of, or under the control of, another person and if the expenditure is not a contribution to a committee." MCL 169.209(2).

Federal Definition: Independent expenditure. - The term "independent expenditure" means an expenditure by a person –
(A) expressly advocating the election or defeat of a clearly identified candidate; and
(B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents. 2 U.S.C. 431(17).

Penalties

Fines serve two purposes: 1) to punish violators, and 2) to deter others from committing the same offense. The current penalties in the legislation would deter and individual, however, a fine up to $10,000 is very minor for a corporation. **I recommend something similar to what Minnesota enacted into law, making the penalty four times the expenditure that violated the Minnesota Campaign Finance Act.**

HB6183

I recommend that all the donors are listed.

On page 1, lines 9-10, it requires the reporting of the name and address of the person to whom the expenditure will be paid. Does this mean the vendor that the entity paid to make the independent expenditure (mail house, T.V. station, radio station, etc.)?

Lastly, the disclaimer for radio should be broaden to include "electrionic communication" as defined in an earlier section of the bill.

To close, Justice John Paul Stevens said it best in his dissent opinion for *Citizens United*, **"Our lawmakers have a compelling constitutional basis, if not also a democratic duty, to take**

measures designed to guard against the potentially deleterious effects of corporate spending in local and national races." *Citizens United v. F.E.C.*, 558 U.S. 83 (2010). I hope the Senate is taking note of their duties when it comes to protecting the integrity of our election process. Time is of the essence on this issue. The Primary Election is just a little over 80 days away and I am certain that entities that wish to take advantage of the lack of regulation created by the SCOTUS are already planning out their activites.